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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,299	06/21/2002	Martin Stanley Johnson	25040-0681	1173
29052	7590	05/20/2004		EXAMINER
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309				PRINCE, FRED G
			ART UNIT	PAPER NUMBER
				1724

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/088,299	JOHNSON ET AL. <i>el</i>
	Examiner Fred Prince	Art Unit 1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 26-28 is/are allowed.
- 6) Claim(s) 1,6-8,12 and 14-22 is/are rejected.
- 7) Claim(s) 2-5,9-11,13 and 23-25 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6-8, 15, 18, and 20-22 are again rejected under 35 U.S.C. 102(b) as being anticipated by Plester et al. (US Pat. No. 5,776,333).

Plester et al. ('333) teach a water treatment apparatus including a treatment housing with an inlet (7), an outlet (8) below the operating level of the apparatus, a headspace (Fig. 1) between the roof and the water level, a heater (6) within the housing, a filter (1) between the heater and the outlet, wherein a heat exchanger (18) cools treated water and heats untreated water (col. 4, lines 63-67), a temperature probe (36) in a separate chamber (Fig. 1), a reservoir (26) having an inlet separated from an outlet (Fig. 1), automatic control means (35) allowing a lower temperature to be maintained (col. 8, lines 31-36).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12 and 14 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Plester et al. ('333).

Plester et al. is described above. Plester et al. do not disclose the wattage of the heat exchanger or the flow rate of the water.

It is submitted that it is well within the purview of the skilled artisan to use a specific flow rate and heater wattage in order to ensure sufficient contact time and heating of the water in order to remove contaminants from the water.

Accordingly, it would have been obvious for the skilled artisan to have used a specific flow rate and heater wattage in the apparatus of Plester et al. in order to ensure sufficient contact time and heating of the water in order to remove contaminants from the water, as known in the art.

5. Claims 16-17 and 19 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Plester et al. in view of Acosta.

Plester et al. is described above. Plester et al. do not disclose a depth probe to fill the housing to a maximum level or multiple depth probes.

Acosta discloses using multiple depth probes (130, 134) in order to fill a housing to a maximum level and monitor maximum and minimum depths in the housing (col. 10, lines 37-65).

It would have been obvious for the skilled artisan to have modified the apparatus of Plester et al. such that it included a depth probe to fill the housing to a maximum level and multiple depth probes in order to monitor maximum and minimum depths in the housing, as suggested by Acosta.

Per claim 19, Plester et al. do not disclose a probe to measure water quality. Acosta discloses a probe to measure quality of the water in order to determine subsequent treating steps (col. 3, lines 14-23).

Allowable Subject Matter

6. Claims 26-28 are allowed.
7. Claims 2-5, 9-11, 13, and 23-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed March 25, 2004 have been fully considered but they are not persuasive.

Applicant argues that Plester '333 does not show a heater disposed in the water treatment cartridge and in direct contact with the water being treated. However, it is noted that in the rejected claims applicant does not recite a heater disposed within a treatment cartridge. To the contrary, the claims merely require that the heater be within a "treatment housing", i.e., a housing containing means for treating water. Clearly, the treatment cartridge of Plester is located within a housing. Accordingly, the argument

fails to patentably distinguish the invention over the prior art as applicant is arguing limitations not claimed. Regarding the water contacting the heat exchanger, it is noted that applicant has recited a process limitation which fails to provide additional structure to the apparatus and is not given patentable weight.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References are cited of interest to show the state of the art.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (571) 272-1165. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt. Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine R. Copenheaver can be reached on (571) 272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Fred G. Prince
FRED G. PRINCE
PRIMARY EXAMINER
5/17/04